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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,347	08/24/2001	Ali Yahiaoui	15,876	1332

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NEENAH, WI 54956

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/938,347

Applicant(s)

YAHIAOUI ET AL.

Examiner

JYOTHSNA A VENKAT

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13, and 15-35 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Receipt is acknowledged of amendment A and extension of time filed on 2/10/03. Claims 1-35 are pending in the application and the status of the application is as follows;

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1) Regarding claim 15, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

2) Claim 17 is in the improper Markush group because of the expression "comprises". *Deletion of "comprises"* is suggested to overcome the above rejection.

Response to Arguments

3. Applicant's arguments filed 2/10/03 have been fully considered but they are not persuasive.

- a. Applicants point out that they are not able to locate the phrase "or the like" in claim 15.

- b. Applicant's attention is drawn to claim 15, for the expression "film-like materials". The expression "like" lacks clarity as the specification does not define the materials contemplated for "the like".

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c. Applicants argue that claim 17 is proper and “ or ‘ terminology is acceptable and the claim comply with 112, 2nd paragraph.

d. In response to the above argument, the expression “ comprises” followed by the Markush members are in the improper Markush group format. Deletion of “ comprises” and amending to “ is ‘ suggested to overcome the above rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 1-13 and 15-35 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,287,581 B1 (‘581).

The instant application is claiming-*A composite material comprising:*

A substrate having first and second surface

A boundary layer on the first surface of the substrate

A topical application on the surface of the boundary layer opposite of the substrate, where in the boundary layer has compositions comprising ingredients (claims 10-13) and also method of forming composite material for transferring the topical application from substrate to surface.

The examiner interprets the meaning of blend is same as combination.

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See figures, See cols. 4-10 for the various ingredients. In each choice of ingredients the patent discloses "mixtures" which implies "blend or combination". See col.4, lines 5-15 for soy sterol, see col.5, lines 10-50 for various compositions which includes claimed petrolatum, soy sterol, ozokerite wax, ethylene/vinylacetate copolymer, see also col.8, line 58 for sunflower oil. See col.10, lines 43 et seq see col.14, lines 40 et seq for the various materials, see cols 15-16 for the description of the figure, see col.17, lines 35-40, which reads on claim 32, see col.14, lines 64 et seq, which reads on claim 5, see col.14, lines 1-15 which reads on claim 33, see also the examples and tables. Since the components are same, claims 2-3, 8, 25-27 and 29-30 are inherent absence of evidence to the contrary.

Response to Arguments

6. Applicant's arguments filed 2/10/03 have been fully considered but they are not persuasive.
7. The gist of applicant's argument is that the patent '581 fails to disclose a boundary layer (for example a layer of Cetiol 1414E myristyl myristate among other suggested boundary layer compounds listed on page 14 at lines 17+ of the specification) between the skin care composition and the substrate and the boundary layer is not blended with the topical application as described in the reference and the patent fails to disclose a boundary layer wherein the transfer forces necessary to separate the topical application from the boundary layer are lower than the transfer forces necessary to separate the substrate from the boundary layer.
8. In response to the above argument, the patent '581 discloses a body sideline which is met by a "boundary layer on the first side of the substrate". Absorbent core of the patent reads on the "substrate". The patent at col.16, lines 39-40 disclose that the body sideline 18 contains

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an effective amount of the composition. With respect to applicants argument that the boundary layer having the layer of Cetiol none of the claims rejected recites that the boundary layer has this component. Since the substrate and the boundary layer are the same the functional language recited in the claim is inherent.

9. Claims 1-11 and 15-35 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,153,209 ('209).

The instant application is claiming-*A composite material comprising:*

A substrate having first and second surface

A boundary layer on the first surface of the substrate

A topical application on the surface of the boundary layer opposite of the substrate, where in the boundary layer has compositions comprising ingredients (claims 10-11) and also method of forming composite material for transferring the topical application from substrate to surface.

The examiner interprets the meaning of blend is same as combination.

See figures, See col. 15, lines 56 et seq for the claimed petrolatum based, see col.s 15-26 for the various ingredients claimed in claim 10, see col.6, lines 40 et seq for the various materials, see cols .8-12 for the description of the figures, see col.30, col.31, lines 20-30, which reads on claim 32, see col.10, lines 45-55, which reads on claim 5, see col.10, lines 20-30, which reads on claim31, see also the examples. Since the components are same, claims 2-3, 8, 25-27,and 29-30 are inherent.

Response to Arguments

10. Applicant's arguments filed 2/10/03 have been fully considered but they are not persuasive.

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11. Applicants argue that the patent '209 fails to disclose a boundary layer between the a topical application and a substrate and fails to disclose a boundary layer, wherein the transfer forces necessary to separate a topical application from the boundary layer are lower than the transfer forces necessary to separate the substrate from the boundary layer.

12. In response to the above argument, it is the examiners position that the patent '209 discloses "top sheet" which reads on the "boundary layer" claimed in the instant application. The "absorbent core" reads on the substrate claimed in the instant application. The top sheet is facing the wearer skin and the composition is applied on top sheet. See col.31, lines 20-30. Since the components are same, the functional language recited in the claims is inherent.

Allowable Subject Matter

13. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

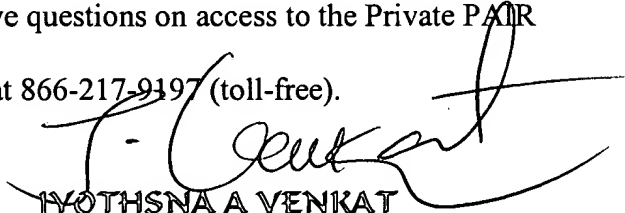
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Thursday, 9:30-7:30:1st and 2nd Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JYOTHSNA A VENKAT
Primary Examiner
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